



## American Gilsonite Company

Bonanza Minesite

HC 73 Box 28

Vernal, Utah 84078-9284 • Phone (435) 789-1921 • Fax (435) 789-1956

August 16, 2002

Mr. Lowell P. Braxton, Director  
Division of Oil, Gas & Mining  
1594 West North Temple St., Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801

Dear Mr. Braxton,

Please find enclosed the Pledge and Escrow Agreement between American Gilsonite Company, the State of Utah, Division of Oil, Gas & Mining and the Escrow Agent.

Three originals are enclosed so that you may sign them all, keep one for the Division and return two to American Gilsonite Company. Ted Stevens will forward one of the executed originals to the Escrow Agent.

Please note that the execution date on the first line of page one is blank. Will you please enter the date on the day that you execute the agreement?

Please call me at 435-781-4534 or Ted Stevens at 650-233-7166 if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kip", followed by a long, horizontal, slightly wavy line that extends to the right.

Kip Grubaugh  
Chief Financial Officer

RECEIVED  
AUG 19 2002  
DIVISION OF  
OIL, GAS AND MINING

*File copy*

## PLEDGE AND ESCROW AGREEMENT

This Pledge and Escrow Agreement ("Agreement"), dated as of 09-03-02, 2002, is made and entered into by and among Del Brady of Advanced Title Company, as escrow agent (the "Escrow Agent"), American Gilsonite Company ("AGC"), an Oklahoma Corporation, and the State of Utah, Division of Oil, Gas & Mining (the "Division").

**WHEREAS**, AGC must provide the Division with financial assurances in the form of an approved reclamation bond, a self-bonding agreement, an escrow account or a certificate of deposit, in an amount sufficient to meet its reclamation obligations pursuant to its Permit No. M/047/010; and

**WHEREAS**, the State of Utah, Division of Oil, Gas and Mining has estimated AGC's current reclamation obligation as \$514,00.00; and

**WHEREAS**, AGC has a surety bond with Travelers Property Casualty in the amount of \$324,900.00 currently in place; and

**WHEREAS**, the Board of Oil, Gas and Mining (the "Board") has ordered that further reclamation obligations of AGC under the Permit No. M/047/010 shall be secured by a self-bonding/escrow agreement to cover that portion not covered by the existing reclamation bond as provided herein; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Security Interest. As partial surety for AGC's obligation to reclaim the Gilsonite mining operations located near Bonanza, Utah, pursuant to its Permit No. M/047/010, AGC hereby agrees to deposit \$189,100.00 into a FDIC account(s) described below, held for the benefit of the Division. AGC also pledges, grants, assigns, transfers and sets over to the Division, and there is hereby created in favor of the Division, a first-lien security interest in and to all of AGC's right, title and interest in and to the Escrow Fund subject to this Pledge and Escrow Agreement as described herein.

2. Representations of AGC. In making the foregoing pledge and assignment, AGC hereby represents and warrants to the Division, that as of the date hereof:

a. AGC has the right and authority to enter into this Agreement and perform its obligations hereunder.

b. The execution and delivery of this Agreement by AGC and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and no other proceeding on the part of AGC is necessary to

authorize this Agreement or to consummate the transactions so contemplated hereby.

3. Appointment of Escrow Agent. AGC and the Division hereby appoint the Escrow Agent as escrow agent for the purposes set forth in this Agreement, and the Escrow Agent hereby accepts such appointment and agrees to perform the duties of the Escrow Agent set forth in this Agreement.

4. Deposit of Funds.

a. Within 5 business days of execution of this Agreement, AGC will make an initial deposit in the amount of \$47,275.00 into a FDIC insured money market accounts with the Escrow Agent, and will provide proof of the deposit to the Division within 10 days; and

b. Thereafter, AGC will make annual payments of \$47,275.00 per year for three additional years until a total of one-hundred and eighty-nine thousand, one-hundred dollars (\$189,100.00) is in escrow for the benefit of the Division. The final \$47,275.00 payment, may be reduced by the operator, by the amount of accrued interest, so that the total deposited amount equals \$189,100. All escrow moneys shall be held in a federally insured (FDIC) account or accounts. If or when the money in escrow exceeds the amount which is federally insured, a second federally insured account shall be opened to hold the balance of the escrow funds. Said payments shall be due on the 15<sup>th</sup> day of June each year. AGC will provide written proof to the Division within 10 days of each deposit.

5. Disbursement of Funds.

a. If during this escrow period the Division approves AGC's reclamation efforts and reduces AGC's reclamation obligations, the Division may allow AGC to withdraw such monies from the Escrow Account in excess of the amount then required to meet AGC's then existing liabilities.

b. Upon an Order of the Board finding that disbursal of the escrowed funds is necessary to complete the reclamation obligations under the approved permit and reclamation contract, the Escrow Agent shall disburse all escrowed funds to the Division without further consent from AGC. AGC agrees and irrevocably instructs the Escrow Agent that neither AGC, nor any person claiming an ownership interest in the escrowed funds, shall have the authority to prevent the Escrow Agent from carrying out the Board's Order to transfer funds to the Division.

c. Upon disbursement of all of the Escrowed Funds and earnings thereon, if any, this Agreement shall be deemed to have been terminated.

6. Interest. All interest earned by the monies in the Fund shall accumulate to the benefit of the Fund until the Escrow Agreement contains \$189,100.00. After the Fund contains \$189,100, all interest shall continue to accumulate in the account(s) unless AGC instructs the Escrow Agent to regularly disburse the accrued interest to AGC. Notwithstanding that accrued interest may be distributed to AGC, in no event shall the Funds held in escrow be less than



\$189,100, except as allowed by section 5.

7. Agent's Duties. All parties hereto understand and agree that the Escrow Agent is not a principal, participant, or beneficiary of the underlying transaction which necessitates this Agreement.

8. Concerning Escrow Agent. The following provisions shall control with respect to the rights, duties, liabilities, privileges, and immunities of Escrow Agent:

a. Escrow Agent is not a party to, is not bound by, and has no duty to inquire into any agreement other than this Escrow Agreement. All references in this Escrow Agreement to other agreements or permits, including the Permit No. M/047/010, are for the convenience of the parties hereto other than Escrow Agent, and Escrow Agent shall have no duties or obligations with respect thereto. Escrow Agent shall have no implied duties beyond the express duties set forth herein.

b. Escrow Agent, in acting hereunder, may assume the genuineness of any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney, or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

c. It is the intention of the parties to this Escrow Agreement that the Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

9. Standard of Care. The Escrow Agent shall have no liability under, or duty to inquire beyond the terms and provisions of this Agreement, and it is agreed that the Escrow Agent's duties are purely ministerial in nature, and that the Escrow Agent shall incur no liability whatsoever, except for willful misconduct or gross negligence.

10. Resignation. The Escrow Agent may at any time resign hereunder by giving written notice of its resignation to the other parties hereto, at their addresses set forth herein, at least thirty days prior to the date specified for such resignation to take effect. Upon the effective date of such resignation, the escrowed funds hereunder shall be delivered to such person as may be designated in joint written instructions to the Escrow Agent from AGC and the Division, whereupon all the Escrow Agent's obligations hereunder shall cease and terminate. The Escrow Agent's sole responsibility during the period after written notice of resignation is given and before the effective date of resignation shall be to keep safely all escrowed funds and to deliver the same to such persons designated in such joint written instructions or in accordance with the directions of a final Order of the Board.

11. Indemnification. AGC agrees to defend, indemnify and hold the Escrow Agent

harmless from and against any and all loss, damage, liability, and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, including the legal costs and expenses of defending itself against any claim or liability in connection with its performance hereunder, except to the extent any such loss, damage, liability, or expense is incurred in connection with any breach by the Escrow Agent or its obligations under this Agreement. The Division agrees to hold Escrow Agent harmless from and against any and all loss, damage, liability, and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, except to the extent any such loss, damage, liability, or expense is incurred in connection with any breach by the Escrow Agent of its obligations under this Agreement.

12. Fees. The fee of the Escrow Agent to serve as Escrow Agent hereunder will be \$50.00 for the first twelve month period, payable in advance and due upon execution of this Escrow Agreement and \$25.00 for each twelve month period thereafter in which this Agreement is in effect, payable at the beginning of such period. AGC shall pay such fees and all reasonable expenses of the Escrow Agent incurred hereunder, including reasonable attorney's fees incurred in connection with Agreement and the performance of the Escrow Agent's duties hereunder. Except as otherwise noted, such fee covers account acceptance, set up, and termination expenses plus usual and customary related administrative services such as safekeeping and distribution of funds specified herein. Activities requiring excessive administrator time or out-of-pocket expenses shall be deemed extraordinary expenses for which related costs, transaction charges, and additional fees will be billed (after delivery of prior notice of such charges to AGC) at the Escrow Agent's standard charges for such items. The Division shall not be liable for such fees. However, in the event AGC fails to pay such fees, the Division shall be provided notice in writing and a reasonable opportunity to pay the fees, either directly or from the escrowed funds and residual amounts to keep this Pledge and Escrow Agreement in full effect.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah (without regard to the principles of conflicts of law embodied therein).

14. Notices. Any notice, communication, or other delivery given under this Agreement must be in writing and (a) delivered personally, (b) delivered by overnight express, (c) sent via facsimile to 650-233-3707, or (d) sent by registered or certified mail, postage prepaid, as follows:

- a. If to the AGC, to:  
Ted Stevens  
Vice President and General Counsel  
American Gilsonite Company  
2400 Sand Hill Road, Suite 201  
Menlo Park, California 94025

Telephone: (650) 233-7166  
Facsimile: (650)233-3707

- b. If to the Division, to:  
Lowell P. Braxton, Director  
Division of Oil, Gas & Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801

Telephone: (801) 538-5340  
Facsimile: (801) 359-3940

- c. If to the Escrow Agent, to:  
Del Brady  
Advanced Title Company, Inc.  
71 North 100 West  
Vernal, Utah 84078

Telephone: 435-789-4944  
Facsimile: 435-789-4950

- d. With copies to:  
A. John Davis  
PRUITT, GUSHEE & BACHTELL  
1850 Beneficial Life Tower  
Salt Lake City, Utah 84111

Telephone: (801) 531-8446  
Facsimile: (801) 531-8468

Attorney General's Office  
Department of Natural Resources  
1594 West North Temple, #300  
Salt Lake City, Utah 84116

Telephone: (801) 538-7227  
Facsimile: (801) 538-7440

Each notice or other communication required or permitted under this Agreement that is addressed as provided in this Section will (i) if delivered personally or by overnight express, be deemed given upon delivery; and (ii) if delivered by mail in the manner described above, be deemed given on the third business day after the day it is deposited in a regular depository of the United States mail. Any party from time to time may change its address for the purpose of notices to

that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

17. Taxpayer Identification. AGC's Employer Identification Number is                     

**IN WITNESS WHEREOF**, this Agreement has been duly executed and delivered by the parties hereto as of the date first written above.

ADVANCED TITLE COMPANY, INC  
Escrow Agent

By: Del R Brady  
Name: Del R. Brady  
Title: President

UTAH DIVISION OF OIL, GAS & MINING, a  
Division of the Department of Natural Resources,  
State of Utah

By: Lowell P Braxton  
Name: Lowell P BRAXTON  
Title: Director, ut OGM

AMERICAN GILSONITE COMPANY, an  
Oklahoma Corporation

By: Kip Grubaugh  
Name: Kip Grubaugh  
Title: CFO